IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 465 OF 2007
IN
PUBLIC INTEREST LITIGATION NO. 2025 OF 2004

Appa Pada Rahivashi Seva Sangh ...
Petitioner

V/s.

State of Maharashtra & Ors. ...
Respondents

Mr. V.A. Thorat, Senior Advocate, with Mr. Vaibhav Sugdare
for the Applicant-Developer – In support

Ms. Palavi Dedhia i/by M/s. Sanjay Udeshi & Co. for the Petitioner
- To show cause

Mr. K.K. Singhvi, Senior Advocate, with Ms. Shobha Ajeet Kumar
for the Respondent-B.M.C – To show cause

Mr. K.R. Belosey, Government Pleader, for the Respondent-State
– To show cause

Mr. S.G. Surana for the Respondent-S.R.A – To show cause

WITH
NOTICE OF MOTION NO. 479 OF 2007
IN
WRIT PETITION NO. 305 OF 1995

Bombay Environmental Action Group & Anr. ...Petitioners

V/s.

Shri A.R. Bharati & Ors. ... Respondents

Mr. Gautam Patel i/by M/s. Jayakars for the Petitioners – In support

Mr. K.R. Belosey, Government Pleader, for the Respondent-State – To show cause

Ms. Rutuza Ambekar for the Respondent-Union of India – To show cause.

CORAM: **J.N. PATEL AND A.A. SAYED, JJ.**

DATE: **OCTOBER 3, 2007**

P.C.:-

1. Notice of Motion No. 465 of 2007 in Writ Petition No. 2025 of 2004 has been taken out by original respondent No. 5, i.e., Sumeer Corporation, seeking extension of time for completion of the project, viz., construction of rehabilitation buildings to rehabilitate the project affected persons from the given scheduled time of 31st December, 2007 to June, 2008.

2. In the affidavit-in-support, it has been stated that the project has been delayed due to non-cooperation of all the concerned authorities of the State Government as well as the Competent Authority under the Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, and, therefore, it is not

possible to provide accommodation to rehabilitate the oustees from the Sanjay Gandhi National Park, at Chandivali, Kurla. Along with the affidavit, various orders passed by this Court and the progress report have been placed on record.

3. The following problems are faced by the applicant in implementation of the Scheme:-

(a) The Slum Rehabilitation Authority delayed giving all its approvals to the developer. For each approval, the applicant has had to approach the Court.

(b) The Commencement Certificate up to the plinth level for the entire Scheme was issued as late as in November, 2006 by the Slum Rehabilitation Authority.

(c) The revised LOI under the 3.11 Scheme was issued in June, 2006. This was after the applicant took out a Notice of Motion in the present Writ Petition.

(d) The local MLA, Mr. Naseem Khan, to preserve his

vote bank, interfered in the Scheme by using the Maharashtra Housing and Area Development Authority and the Office of the Collector to obstruct the construction under the Scheme. He used the MLA funds for construction of toilet blocks in the middle of the Scheme, for which the applicant had to approach the Court, and get orders to restrain the construction of a toilet block. He used the Office of the Collector to seal the applicant's machinery, for which the applicant had to approach the Court by way of Writ Petition (Lodging) No. 1921 of 2006, after which, the seal was removed.

(e) Certain areas on the land are hilly terrain, and the same were required to be levelled out to construct the tenements by the use of explosives. When explosives are used for blasting, the stones fly up to a range of 100 feet. Thus, even on the land next to the land which is uneven, construction cannot be started, as there would be damage to the construction, and the soil would become loose, the building would be damaged or the

foundation would become loose. The blasting on the said land has tremendous pressure. The stones can be of the size of 1” to 1'. Stones can fly from one point to another point, which is 100 feet away. Even if construction is started, it can be dangerous for people to live nearby, as there could be some danger.

(f) Some slum dwellers obstructed the implementation of the Scheme by filing Writ Petition No. 150 of 2006, which came to be dismissed.

(g) The N.G.O., Niwara Hakk Welfare Centre, which was concerned with the shifting of slum dwellers, interfered in the development process. The Slum Rehabilitation Authority had insisted that all the applications should be approved by the N.G.O., as their name was shown on the L.O.I. Therefore, even the application to put up 6 and 7 floors was not sanctioned because the N.G.O. did not give its consent. An application had to be moved before the Court in Notice of Motion No. 120 of 2005 to obtain the sanction for

putting up 6 and 7 floors.

(h) The applicant filed Writ Petition No. 163 of 2006 to delete the name of the N.G.O. From the L.O.I., and by order dated 5th April, 2006 passed by the State Government, the name of the N.G.O. was deleted, and the applicant was described as the 'Developer' under the Scheme.

(i) As Annexure II was not available because the slum dwellers did not cooperate in giving documents, the applicant had to file Writ Petition No. 4439 of 2007. After filing of Writ Petition No. 4439 of 2007, the matter was adjourned on two occasions with directions to the various authorities to coordinate and resolve the problem of the Developer. As a meeting did not materialise, the Court levied penalty upon the Authorities. Immediately thereafter, Annexure II came to be issued, and revised L.O.I. under the 33 (10) Scheme came to be issued.

(j) The Slum Rehabilitation Authority has delayed issue of Development Control Regulation Certificate under the project. The applicant depends upon the funds generated from the sale of T.D.R., which finances the entire project.

(k) To provide the infrastructure to the entire project the applicant was to lay the water main, storm water drain and sewerage on the property, which would connect to the municipal main at Kherani Junction. The place where it was to be laid was occupied by slums. The applicant took out Notice of Motion No. 558 of 2005 for shifting those persons to enable the applicant to lay the infrastructure. By order dated 28th September, 2006, the slum dwellers were to shift to the transit accommodation, but the local M.L.A., Mr. Naseem Khan, came and obstructed the shifting. Thus, the applicant finally had to pay consideration to the slum dwellers to leave the site.

4. Another Notice of Motion is taken out by Bombay

Environmental Action Group and another, i.e., Notice of Motion No. 479 of 2007 in Writ Petition No. 305 of 1995, wherein they have sought directions from this Court against the Government of Maharashtra, through its Forest Department and the Conservator of Forests / Director of Sanjay Gandhi National Park, to complete the construction of boundary wall around Sanjay Gandhi National Park, as ordered by this Court (vide order dated 2nd December, 1998 and judgment dated 15th September, 2003) and place before the Court the current status of completion of the boundary wall. It is further sought that the respondents concerned be directed to remove all encroachments and illegal occupants i.e., encroachers and complete the re-settlement of eligible encroachers from the Sanjay Gandhi National Park on or before the time extended by this Court, which presently is 31st December, 2007, by deploying Special Reserve Police Force; and all illegal structures within the Sanjay Gandhi National Park be demolished and to prevent further recurrence of encroachments in compliance of the orders passed by this Court; and that respondent No. 1 should be restrained from transferring Dr. P.N. Munde, presently holding the post of the Conservator of Forests and Director of the Sanjay Gandhi National Park, as also the post of Competent Authority under Section 3 of

the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 for the areas comprising of all lands in the Sanjay Gandhi National Park, without permission from this Court.

5. In support of the Notice of Motion, they have filed the affidavit of Debi Goenka, one of the Member Activists of Petitioner No. 1, Bombay Environmental Action Group, at whose instance, this Court has directed removal of illegal encroachments and re-settlement / rehabilitation of the eligible encroachers (*Bombay Environmental Action Group & Ors. v. A.R. Bharati, Deputy Conservator of Forests & Ors.*, 2004 (3) Bom.C.R. 244). This Court issued various directions to implement its orders.

6. It is contended by the applicants that on 22nd July, 2007, the petitioner-applicants visited the Sanjay Gandhi National Park, and they have annexed site report as Exhibit 'B' to the affidavit in support of the Notice of Motion, along with photographs.

7. We have heard the learned counsel for the parties.

8. On going through the Notice of Motion taken out by Sumeer Corporation, which have undertaken the project for rehabilitation of the oustees of the Sanjay Gandhi National Park, who are found eligible for rehabilitation, and having taken into consideration the grievances made by the said applicants, and the site report as submitted by the Bombay Environmental Action Group, we have no hesitation to come to the conclusion that due to non-cooperation of the various authorities of the State Government, Sumeer Corporation is not in a position to complete their project within the time-bound programme, in spite of the fact that time and again, this Court has granted extension of time.

9. We are of the clear opinion that in spite of orders of this Court and the project of rehabilitation being entrusted to M/s. Sumeer Corporation, it will not be possible for them to complete the project or to accommodate and rehabilitate persons eligible and entitled for the same; but this should not leave the Court in a helpless position so as to permit the State and its Authorities to tolerate encroachments in the Sanjay Gandhi National Park.

10. It has been brought to our notice that more and more persons are now encroaching the forest, and the situation has gone out of control of the State Government and its officials, and particularly the Forest Department, for want of coordination amongst different Authorities in preventing the same.

11. Therefore, we find it necessary that the matter will have to be tackled at the highest level, and for the said purpose, we nominate the Chief Secretary, Government of Maharashtra, as the coordinator, and request him to hold a meeting of all principal officers of the respective departments concerned with the removal and re-settlement / rehabilitation of encroachers, who are eligible for such rehabilitation in terms of the judgment of this Court, and take necessary steps in the matter by deploying all required agencies, so that all illegal encroachments are removed from the Sanjay Gandhi National Park, which is a protected forest, on or before 31st December, 2007.

12. The Chief Secretary is further requested to take immediate steps to resolve the problems faced by M/s. Sumeer Corporation, which have been entrusted with the project, so that all

the eligible oustees of the National Park can be rehabilitated well within time. Insofar as others are concerned, we do not find that it is the responsibility of the State Government to rehabilitate encroachers, who have trespassed and encroached into the protected forest and raised illegal structures, and they deserve to be removed from the protected forest by deploying necessary men and material and take necessary steps to get the proposed boundary wall completed on or before 31st December, 2007.

13. We further request the State Government not to transfer Dr. P.N. Munde, Conservator of Forests and Director of the Sanjay Gandhi National Park, till all encroachments from the protected forest are removed, and the boundary wall, as proposed, is constructed.

14. We direct the State Government to take all necessary preventive steps to stop any non-forest activity within the protected forest, and not to permit any Authority to provide civic amenities to encroachers within the protected forest. Needless to say that as no non-forest activity in a protected forest is allowed, the Competent Authority under the Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is not vested with

jurisdiction to notify a colony of encroachers within the protected forest as 'slum'.

15. In our humble opinion, unless the State Government takes stringent steps in the matter, and acts upon our order, the encroachments in the Sanjay Gandhi National Park, which is a protected forest, will continue, to the detriment of environment and forest.

16. In view of the fact that Public Interest Litigation No. 2025 of 2004 filed by Appa Pada Rahivashi Seva Sangh has been withdrawn, we are listing both the petitions for monitoring the removal of encroachments as directed by us, on Thursday, the 10th January, 2008. Till then, we are quite hopeful that the Chief Secretary will be able to act in accordance with our order.

17. We make it clear that if the Chief Secretary, Government of Maharashtra, is not in a position to deal with the problem as per the judgment of this Court and the orders in the two Notices of Motion, he should file his affidavit in the matter on or before the next date, so that this Court can understand the reasons and justification or inability of the Government of Maharashtra to perform its duties, particularly relating to preservation of environment and forest, so that further orders and directions can

be passed in the matter.

18. Both the Notices of Motion stand disposed of accordingly.

19. We request the learned Government Pleader to communicate our order to the Chief Secretary, Government of Maharashtra, to enable him to act in the matter.

J.N. PATEL, J.

A.A. SAYED, J.